

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

SEP 19 PM 2 14

OFFICE OF THE
EXECUTIVE SECRETARY

IN RE:

PETITION OF THE TENNESSEE SMALL LOCAL)
EXCHANGE COMPANY COALITION FOR)
TEMPORARY SUSPENSION OF 47 U.S.C.)
§ 251(b) AND 251(c) PURSUANT TO 47 U.S.C.)
§ 251(f) AND 47 U.S.C. § 253(b).)

DOCKET NO. 99-00613

SUPPLEMENTAL TESTIMONY

OF

STEVEN E. WATKINS

on behalf of

The Petitioner

**Ardmore Telephone Company
CenturyTel of Adamsville, Inc.
CenturyTel of Claiborne, Inc.
CenturyTel of Ooltewah-Collegedale, Inc.
Concord Telephone Exchange, Inc.
Crockett Telephone Company, Inc.
Humphreys County Telephone Company
Loretto Telephone Company, Inc.
Millington Telephone Company, Inc.
Peoples Telephone Company, Inc.
Tellico Telephone Company, Inc.
Tennessee Telephone Company
United Telephone Company
West Tennessee Telephone Company, Inc.**

"Tennessee Small Local Exchange Company Coalition"

September 19, 2000

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9-20-00

1 Q: PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

2 A: My name is Steven E. Watkins. My business address is 2120 L Street, N.W., Suite 520,
3 Washington, D.C., 20037.

4 Q: DID YOU PROVIDE TESTIMONY IN THIS PROCEEDING ?

5 A: Yes. I submitted direct written testimony on February 22, 2000 (to be referred to as
6 "Watkins Direct") on behalf of the Tennessee Small Local Exchange Company Coalition (to
7 be referred to as the "Coalition"). I also submitted rebuttal written testimony on April 6,
8 2000 (to be referred to as "Watkins Rebuttal").

9 The fourteen (14) members of the Coalition provide local exchange and exchange access
10 services predominantly in the more rural and smaller town areas of Tennessee. This
11 proceeding is addressing a Petition filed by the Coalition members seeking suspension of
12 certain interconnection requirements and proceedings.

13 Q: WHAT IS THE PURPOSE OF THIS SUPPLEMENTAL TESTIMONY ?

14 A: This supplemental testimony is intended to clarify my previous testimony with respect to the
15 July 18, 2000 decision of the United States Court of Appeals for the Eighth Circuit in Iowa
16 Utilities Board v. Federal Communications Commission. This testimony also updates the
17 record with respect to the status of regulatory policy development and proceedings that
18 remain unresolved.

19 I do not intend to burden the record or to revisit all of the issues already addressed in my
20 direct and rebuttal testimony. Accordingly, this Supplemental Testimony should be read in
21 conjunction with my previous testimony which set forth a more exhaustive discussion of
22 Universal Service implications, public interest factors, characteristics of the Coalition
23 members, and the burdensome effects of interconnection requirements.

24 Q: HOW DOES THE EIGHTH CIRCUIT'S DECISION RELATE TO THIS PROCEEDING?

25 A: The decision of the Eighth Circuit Court of Appeals directly addresses the legal issues raised
26 in this proceeding and has clarified some of those issues. The decision comes in response
27 to LEC questions about, and challenges to, the FCC rules regarding Section 251(f)
28 suspension and modification proceedings. In examining the FCC rules, the Eighth Circuit
29 made it clear that there are three alternative statutory conditions under Section 251(f)(2)
30 which form a basis for a suspension or modification of interconnection requirements. Those
31 conditions are 1) significant adverse impact on users, 2) undue economic burden, and 3)
32 technical infeasibility. The public interest should be considered in addition to these three
33 alternative conditions. Thus, to the extent that there was any confusion over the statutory
34 framework for granting suspensions or modifications under Section 251(f)(2), the Eighth
35 Circuit decision has eliminated such uncertainty.

36
37 Further, the Eighth Circuit addressed the meaning of the undue economic burden condition

1 and the validity of the FCC rule that defined that standard as "undue economic burden
2 beyond the economic burden that is typically associated with efficient competitive entry."
3 The Eighth Circuit concluded that the FCC's definition of economic burden was incorrect
4 and set a higher burden than contemplated by the statute. In so concluding, the Court
5 recognized that Section 251(f), in general, was enacted by Congress to relieve smaller and
6 more rural LECs of some burdensome interconnection obligations otherwise imposed on
7 incumbent LECs. By limiting economic harm to this high standard, the Court stated that the
8 FCC had "impermissibly weakened" this broad statutory protection to rural LECs.

9 Q. HOW DOES THE EIGHTH CIRCUIT'S DEFINITION OF ECONOMIC HARM IMPACT
10 THIS PROCEEDING?

11
12 The Court has lessened the burden of proof on the rural LECs for their suspension request
13 based, in part, on the economically burdensome nature of the interconnection requirements.
14 Rural LECs need only show that they will suffer economic harm that is unduly burdensome
15 and are no longer required to make the higher showing described in the FCC rule and relied
16 on by Intervenor in their previous testimony. While undue economic harm would be
17 established by a showing of harm beyond that typically associated with competitive entry,
18 it is not necessary that this high standard be met to establish undue economic burden under
19 Section 251(f)(2).

20 Q: BASED ON THE EIGHTH CIRCUIT OPINION, WHAT CONSIDERATION SHOULD BE
21 GIVEN TO UNIVERSAL SERVICE OBJECTIVES?

22 A: The Eighth Circuit Court specifically clarified that the effect that interconnection
23 requirements would have on the achievement of Universal Service objectives is a relevant
24 factor to consider in evaluating the impact of potentially burdensome interconnection
25 requirements, beyond the issues of economic burdens. Universal Service implications are
26 obviously an important public interest consideration.

27 Q: IS YOUR PREVIOUS TESTIMONY INCONSISTENT WITH THE EIGHTH CIRCUIT
28 DECISION REGARDING THE RELEVANT CONSIDERATIONS AND CONDITIONS?

29 A: No. My previous testimony submitted in this docket is compatible with the Eighth Circuit
30 Court's clarification. While my direct and rebuttal testimony addressed conditions relevant
31 to the previous rule regarding economic burden beyond typical efficient competitive entry,
32 my testimony was not limited to the discussion of conditions related to that single rule and
33 even concluded that the economic harm to the Coalition would satisfy that rule. My
34 testimony also addressed public interest and Universal Service factors as well as the actual
35 economic burdens that arise with application to smaller LECs of some interconnection
36 requirements.

37 I respectfully offered a framework under which the TRA should evaluate conditions relevant
38 to interconnection requirements and potential adverse effects. Watkins Direct at 12-13. The
39 TRA will be called upon to apply its policymaking judgement. *Id.* The framework that I
40 outlined is consistent with the Eighth Circuit Court's clarification.

1 Q: DID YOUR PREVIOUS TESTIMONY ADDRESS THE PUBLIC INTEREST,
2 UNIVERSAL SERVICE CONSIDERATIONS?

3 A: Yes. I outlined an extensive set of public interest and potential harm considerations that are
4 the basis for the suspension request. Watkins Direct at 12-18. In addition to the economic
5 burden on telephone companies, my testimony discussed adverse economic impact on rural
6 users. *Id.* I also provided discussion of the Universal Service objectives in the Act and the
7 impact on the Coalition members and their rural subscribers in light of burdensome
8 interconnection requirements. Watkins Direct at 7-10 (discussing the current regulatory plan
9 and the manner in which Universal Service objectives are achieved; the friction between this
10 existing plan and a multiple-provider, selective-entry market environment; the importance
11 of carrier-of-last-resort considerations; and the impact on the development of advanced
12 networks and services in rural telephone company service areas at affordable and comparable
13 prices.)

14 Q: DID YOU ADDRESS ADVERSE ECONOMIC EFFECTS OTHER THAN THOSE
15 PREVIOUSLY SUGGESTED BY THE FCC'S SINGLE RULE?

16 A: Yes. My testimony already recognized that the economic burdens that the TRA should
17 consider were not limited solely to those associated with the "efficient competitive entry"
18 criterion. My testimony explained the adverse effects associated with imposition of specific
19 interconnection requirements from which the Coalition members seek suspension. Watkins
20 Direct at 18-22 (discussing the effects on smaller LECs compared to Bell companies; the
21 unwarranted free market trial that resale provides selective market entrants; number
22 portability costs; and the adverse effects of rigid "reciprocal compensation" approaches).

23 I also explained the subset Section 251(c) interconnection requirement effects of
24 handicapping one competitor to the advantage of others and the result of disparate
25 interconnection requirements which are fundamentally an unwarranted economic burden on
26 small LECs. Watkins Direct at 4-5; Watkins Rebuttal at 8-9. Regardless of what conditions
27 are considered in suspension request proceedings, these disparate interconnection
28 requirements, if applied, would impose burdens well beyond those typically associated with
29 efficient competitive markets. The disparate requirements of Section 251(c) go well beyond
30 statutory or inter-company relationships expected of business entities in other competitive
31 industries.

32 My testimony explained that the Section 251(c) requirements are the most onerous and were
33 intended to apply to the larger incumbent LECs. *Id.* Smaller LECs do not exhibit the degree
34 of market dominance that Bell companies do -- a dominance that the most onerous subset of
35 Section 251(c) interconnection requirements were obviously intended to address. *Id.* at 4.
36 The 8th Circuit Court came to a similar conclusion. The Court concluded that, because Rural
37 Telephone Companies have less financial capacity than the larger incumbent LECs (such as
38 Bell companies), Congress declared that Rural Telephone Companies should remain exempt
39 from the most onerous subset of interconnection requirements (*i.e.*, Section 251(c)) unless
40 and until a finding can be made that the imposition of such requirements would not result in
41 economic harm to rural customers. 8th Circuit Decision at pp. 28-29. Moreover, in light

1 of the obvious effect of disparate requirements in a competitive world, the Court concluded
2 that "[t]here can be no doubt that it is an economic burden on an ILEC to provide what
3 Congress has directed it to provide to new competitors in § 251(b) and § 251(c)." 8th Circuit
4 Decision at p. 28.

5 Q: WHAT IS THE STATUS OF THE FEDERAL PROCEEDINGS THAT ARE RELEVANT
6 TO INTERCONNECTION REQUIREMENTS AND THE SUSPENSION REQUEST?

7 A: In my direct testimony, I summarized the myriad of federal policymaking matters that remain
8 unresolved. Watkins Direct at pp. 22-26. These include new policies and rules which must
9 be established in light of passage of the Telecommunications Act of 1996 (the "1996 Act")
10 and existing rules that are undergoing restructuring for similar reasons.

11 Foremost, the Universal Service plan for Rural Telephone Companies is not resolved. The
12 Federal Communications Commission ("FCC") and Federal-State Joint Board previously
13 decided that a separate proceeding should be conducted to examine the unique economic
14 characteristics of rural local exchange carriers ("LECs") such as "higher operating and
15 equipment costs attributable to lower subscriber density, small exchanges, and lack of
16 economies of scale" *Report and Order* released by the FCC on May 8, 1997, in CC
17 Docket No. 96-45. A deferred timetable has been followed with respect to a new Universal
18 Service plan for Rural LECs. The industry still awaits a recommendation from the Rural
19 Task Force formed by the FCC and Joint Board. The FCC has stated that the high-cost
20 support mechanism for rural LECs will not be revised until the FCC and the Joint Board have
21 completed their review of the matter following a recommendation from the Rural Task
22 Force. A recommendation and further review is expected later this year.

23 Q: ARE THERE CHANGES IN THE FRAMEWORK FOR ACCESS CHARGES?

24 A: Yes. In recent months, the FCC has moved forward with a major modification to interstate
25 access charges for the larger price-cap companies. Interstate access charges will be reduced
26 over a transition period; subscriber line charges will be increased. A new federal USF has
27 been established to address displaced cost recovery that previously was supported by access
28 charge revenue. The changes also introduce restructuring of some of the interstate access
29 charge elements. The overall effect is to reduce the amount of a LEC's network and
30 operating costs that are recovered from interexchange carrier services and to increase the cost
31 recovery that is obtained directly from basic monthly charges to end users. The displacement
32 of cost recovery will put pressure on affordable and comparable intrastate rates for some
33 carriers, and states may be required to address the residual effects in state USF plans.

34 The regulatory examination of access charges has now shifted to potential changes in
35 interstate access charge structure and levels for the smaller, non-price cap companies (all of
36 the Coalition members are non-price cap companies). Proposals that would result in the
37 reduction of interstate access rates for the Coalition members are also under evaluation.
38 Similar cost recovery shifts are likely to be the result of changes for the smaller LECs. A
39 proceeding to consider changes in the interstate access charge plan as it applies to the
40 smaller, so-called rate-of-return companies is still pending before the FCC. The schedule for

1 resolution of this docket is not known.

2 As with the price-cap carriers, changes in interstate access charge levels will require
3 coordination with changes in the interstate USF and residual intrastate changes, as well as
4 the potential need for the establishment of state universal service plans to address any
5 residual cost recovery and comparable basic rate effects.

6 Q: ARE THERE ANY STATE REGULATORY PROCEEDINGS THAT AFFECT THE
7 CONSIDERATIONS IN THIS SUSPENSION REQUEST PROCEEDING?

8 A: Yes. The Tennessee Regulatory Authority ("TRA") recently initiated a proceeding in Docket
9 No. 00-00523 to address rural universal service issues within the State. Consistent with my
10 testimony above, the TRA's attention to the need for a State USF with respect to Rural
11 Telephone Companies anticipates the likely changes that are, or will be, occurring with
12 respect to cost recovery and rate impacts for rural LECs and their customers. The industry
13 and the TRA has just recently started its evaluation of these issues.

14 Q: ARE THERE ANY OTHER PENDING CHANGES IN THE STATE THAT ARE
15 RELEVANT TO THE CONSIDERATIONS HERE?

16 A: Yes. The TRA has also recognized that changes in intrastate access charges with respect to
17 the existing contractual intraLATA access arrangements that the Coalition members have
18 with BellSouth in the State are directly related to the examination and establishment of a
19 State USF and the potential effect on the basic rates. As the initial comments in the
20 Universal Service proceeding indicate, implementation of a State USF will be necessary to
21 address the cost recovery shifts in a manner that is equitable and consistent with the public
22 interest.

23 Q: WHAT IMPLICATIONS DO THESE PROCEEDINGS HAVE WITH RESPECT TO THE
24 SUSPENSION REQUEST?

25 A: The regulatory approach under which Universal Service has been fostered in Tennessee and
26 across the nation is based on rate structures, rate levels, and regulatory requirements
27 developed in a monopoly environment. Many, if not most, of the regulatory designs of the
28 past will require restructuring in a competitive environment, and the rural LECs will require
29 time to implement changes which will allow these smaller LECs to respond to competition
30 in a manner that will avoid adverse results for rural subscribers. Federal and State universal
31 service plans are critical to this transition. New rules and policies must be established and
32 existing rules must be modified in an orderly and predictable manner for policymakers to be
33 assured that the intended results are achieved. The imposition of the burdensome
34 interconnection requirements at this time, prior to the establishment of the necessary
35 mechanisms, would result in counter-productive and adverse effects for rural LECs and rural
36 users. Until the plan is developed, and the impact of these policies is examined, the public
37 interest should not be exposed prematurely to the additional, indeterminate consequences of
38 application of burdensome interconnection requirements.

1 Q: DOES THIS CONCLUDE YOUR SUPPLEMENTAL TESTIMONY ?


2 A: Yes.

DISTRICT OF COLUMBIA, ss:

BEFORE ME, the undersigned authority, a Notary Public, duly commissioned and qualified in the District of Columbia, personally came and appeared Steven E. Watkins, who, being by me first duly sworn deposed and said that;

He is appearing as a witness on behalf of the Tennessee Small Local Exchange Company Coalition before the Tennessee Regulatory Authority and if present before the Authority and duly sworn, his supplemental testimony would be as set forth in the pre-filed supplemental testimony dated September 19, 2000, and filed in Docket No. 99-00613.

This 16th day of September, 2000.


Steven E. Watkins

Sworn to and subscribed before me this 16th day of September, 2000.


Notary Public, D.C.

My Commission Expires:

CHANG HO CHOI, NOTARY PUBLIC
DISTRICT OF COLUMBIA
COMMISSION EXPIRES: 6/14/2004

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing was served on the following counsel of record, via the method checked, on September 9th, 2000:

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A handwritten signature in cursive script, appearing to read "Jonathan Swidler", is written over a horizontal line.